

21

IN THE PRIVY COUNCIL

No.28 of 1971

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ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF NEW SOUTH  
WALES

---

IN THE MATTER of the Estate of GEORGE BRERETON SADLEIR  
FALKINER deceased

- and -

IN THE MATTER of the Stamp Duties Act 1920 - 1959

---

B E T W E E N :

PAULINE ARNOLD FALKINER  
PERPETUAL TRUSTEE COMPANY LIMITED Appellants

- and -

THE COMMISSIONER OF STAMP DUTIES Respondent

---

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
10 MAY 1973  
25 RUSSELL SQUARE  
LONDON W.C.1

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Solicitors for the Appellant

Solicitors for the  
Respondent

(i)

IN THE PRIVY COUNCIL

No.28 of 1971

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF  
NEW SOUTH WALES

B E T W E E N :

PAULINE ARNOLD FALKINER  
PERPETUAL TRUSTEE COMPANY LIMITED Appellants

- and -

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RECORD OF PROCEEDINGS

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\* These trust deeds are identical in every respect to the trust deed contained in the 1st Schedule to the Case stated except as follows :-

(i) The age of the Contingent Beneficiary (as defined in Clause 3 (b)(i) of the Trust Deed contained in the 1st Schedule) referred to in Sub-clauses 3 (b)(i), 3 (b)(ii) and 3 (b)(iii) of the Trust Deeds contained in each of the Schedules is as follows :

Schedule 2	23 years
Schedule 3	24 years
Schedule 4	25 years
Schedule 5	26 years
Schedule 6	27 years
Schedule 7	28 years
Schedule 8	29 years
Schedule 9	30 years
Schedule 10	31 years

(ii) Clause 4 of the Trust Deeds contained in Schedule 2, 4, 6, 8, and 10 contain the words " such part or parts as shall not in total exceed £40,000 in any one calendar year" in place of the words "apply the whole or any part or parts".

For this reason the 2nd to 10th Schedules have not been reprinted in the Record but none-the-less are intended to remain part of the Case stated.



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The said Pauline Arnold Falkiner and Perpetual Trustee Company Limited are hereinafter called "the appellants".

4. Canberra Estates Property Limited (hereinafter called "the trustee") is and at all material times has been a company incorporated in the Australian Capital Territory.

5. On 4th October 1961 and within the Australian Capital Territory :-

- (a) the deceased paid to the trustee ten separate sums of one hundred thousand dollars (\$100,000.00) each, and 10
- (b) the deceased and the trustee executed ten separate deeds each bearing date 4th October 1961 and made between the deceased of the one part and the trustee of the other part

The terms of the said deeds are as set forth in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth schedules hereto which are intended as part of this Case. 20

6. Thereafter also on 4th October 1961 and within the Australian Capital Territory the trustee, in exercise of the powers conferred on it by the said respective deeds, applied each of the said ten separate sums of one hundred thousand dollars (\$100,000.00) in the acquisition by application and allotment of 10,000 fully paid ordinary shares of two dollars (\$2.00) each in Booka Pty. Limited (a company which was incorporated in the Australian Capital Territory) at par and 32,000 fully paid ordinary shares of two dollars (\$2.00) each in Senior Park Pty. Limited (a company which was incorporated in the Australian Capital Territory) at a premium of fifty (50) cents per share. Thereafter the trustee continued to hold each of the said ten parcels of 10,000 shares in Booka Pty. Limited, and 32,000 shares in Senior Park Pty. Limited as the Trust Fund referred to in the said respective deeds until, and so held the same at, the time of the death of the deceased. 40

7. At the time of the death of the deceased, the value of each of the said ten parcels of 10,000

shares in Booka Pty. Limited and 32,000 shares in Senior Park Pty. Limited was One hundred thousand dollars (\$100,000.00) and the total value of all of the said shares was one million dollars (\$1,000,000.00).

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10 8. From the time of allotment until the death of the deceased and at all other material times all of the said shares in Booka Pty. Limited and in Senior Park Pty. Limited acquired and held by the trustee as aforesaid were registered in the share registers of the said companies maintained in the Australian Capital Territory.

20 9. The Commissioner of Stamp Duties in assessing the death duty payable in respect of the estate of the deceased claimed that by virtue of sections 102(2)(a) and 102(2A) of the Stamp Duties Act, 1920-1959, each of the said ten parcels of 10,000 shares in Booka Pty. Limited and 32,000 shares in Senior Park Pty. Limited (a total of 100,000 shares in Booka Pty. Limited and 320,000 shares in Senior Park Pty. Limited) was included in the dutiable estate of the deceased, and the Commissioner accordingly assessed the death duty payable in respect of the said estate at the sum of seven hundred and thirty five thousand eight hundred and ninety nine dollars and twenty six cents (\$735,899.26) (subject to an allowance or refund of four thousand three hundred and ninety dollars and twenty three cents (\$4,390.23) pursuant to the provisions of section 103A of the said Act).

30

10. The appellants claim that none of the said shares in Booka Pty. Limited or in Senior Park Pty. Limited should be included in the dutiable estate of the deceased.

40 11. The appellants being dissatisfied with the said assessment of death duty in respect of the estate of the deceased have pursuant to section 124 of the said Act and within the time therein limited delivered to the Commissioner a notice in writing requiring him to state a case for the opinion of this Honourable Court and have paid the said duty in conformity with the said assessment and the sum of forty dollars (\$40.00) as security for costs in accordance with the said section of the said Act.

12. If none of the said shares in Booka Pty. Limited

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or in Senior Park Pty. Limited are to be included in the dutiable estate of the deceased the death duty payable in respect of the said estate will be reduced by the sum of two hundred and seventy thousand dollars (\$270,000.00) to the sum of four hundred and sixty five thousand eight hundred and ninety nine dollars and twenty six cents (\$465,899.26) (subject to an allowance or refund of four thousand three hundred and ninety dollars and twenty three cents (\$4,390.23) pursuant to the provisions of section 103A of the said Act). 10

13. The questions for the decision of this Honourable Court are :-

- (1) Whether the whole of the abovementioned 100,000 shares in Booka Pty. Limited and 320,000 shares in Senior Park Pty. Limited should be included in the dutiable estate of the deceased for the purpose of the assessment and payment of death duty.
- (2) If the answer to question (1) is in the negative, whether any, and if so which, of the said shares in Booka Pty. Limited and in Senior Park Pty. Limited should be included in the dutiable estate of the deceased for the purpose of the assessment and payment of death duty. 20
- (3) Whether the amount of death duty which should properly be assessed in respect of the estate of the deceased (subject to any allowance or refund pursuant to the provisions of section 103A of the said Act) is 30
  - (a) seven hundred and thirty five thousand eight hundred and ninety nine dollars and twenty six cents (\$735,899.26) or:
  - (b) four hundred and sixty five thousand eight hundred and ninety nine dollars and twenty six cents (\$465,899.26) or ;
  - (c) some other, and if so, what amount.
- (4) How are the costs of this Case to be borne and paid. 40

DATED this 12th day of November 1970

G.V. Simpson

Commissioner of Stamp Duties.



No. 2

FIRST SCHEDULE

The fifteen pages following constitute the First Schedule referred to in the Case Stated by me on this 12th day of November 1970 in the matter of the Estate of George Brereton Sadleir Falkiner, deceased.

G.V. Simpson

Commissioner of Stamp Duties

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10.

FIRST SCHEDULE TO CASE STATED(First Trust Deed)

THIS DEED made the 4th day of October One thousand nine hundred and sixty-one BETWEEN GEORGE BRERETON SADLEIR FALKINER of "Haddon Rig" Warren in the State of New South Wales Sheep Breeder (hereinafter called "the Settlor") of the one part and CANBERRA ESTATES PTY. LIMITED a Company duly incorporated under the Ordinances in and for the Australian Capital Territory and having its registered office at Suite 103 M.L.C. Building Petrie Street Canberra (hereinafter called "the Trustees") of the other part WHEREAS the Settlor being desirous of settling the sum of FIFTY THOUSAND POUNDS (£50,000. 0. 0.) in manner hereinafter appearing has paid the said sum to the Trustees to the intent that the same shall be held on the trusts hereinafter declared AND WHEREAS it is considered possible that further sums of money or other property (real or personal) may from time to time be paid or transferred to the Trustees for the time being of this Deed by way of addition or accretion to the said sum hereby settled or otherwise upon and subject to the trusts and provisions of this Deed NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows :-

1. In this Deed the following expressions shall have the following meanings namely :-

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"The Trustees" shall mean Canberra Estates Pty. Limited or other the Trustees or Trustee for the time being of this Deed

"The Trust Fund" shall mean and include :

- (a) The said sum of Fifty Thousand Pounds (£50,000. 0. 0.)
- (b) All sums of money and other property (real or personal) at any time or times hereafter paid or transferred to and accepted by the Trustees by way of addition or accretion to the said sum of Fifty Thousand pounds (£50,000. 0. 0.) hereby settled or otherwise upon the trusts of this Deed and 10
- (c) The investments and property from time to time representing the said sum of Fifty thousand pounds (£50,000. 0. 0.) and such other property as aforesaid (if any)
2. With regard to property hereafter added or proposed to be added to the said sum of Fifty thousand pounds (£50,000. 0. 0.) hereby settled the following provisions shall apply that is to say: 20
- (a) Without the previous consent of every Trustee for the time being of this Deed no property which involves the holder or owner thereof in any personal liability shall be accepted upon the trusts of this Deed
- (b) All lands stocks shares and other property accepted on the trusts of this Deed shall be held by the Trustees UPON TRUST to sell the same at any time prior to the termination of the trusts hereinafter declared at their discretion but with full power to postpone conversion and the net proceeds of sales of such premises and the rents profits and income until sale thereof shall be held on the trusts hereby declared of the Trust Fund and the income thereof 30
3. The Trustees shall hold all moneys from time to time forming part of the Trust Fund UPON TRUST to invest the same in any one or more of the modes of investment hereinafter authorised and subject thereto shall hold the Trust Fund and the income thereof upon the trusts hereinafter expressed concerning 40

the same that is to say :

(a) During the minority of any person or persons who under the trusts hereinafter declared would for the time being if of full age be entitled to receive the income of the Trust Fund the Trustees shall invest the rents profits and income of and from the Trust Fund in or upon investments in or upon which the Trustees are by this Deed authorised to invest money and may from time to time vary such investments and (subject as hereinafter provided) shall accumulate the yearly produce of the said investments in the way of compound interest by from time to time similarly investing the same and the yearly produce of the investments thereby from time to time acquired.

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(b) Subject as hereinafter provided the Trustees shall stand possessed of the Trust Fund and all accumulations of income derived from such rents profits and income as aforesaid and the investments representing the same :

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(i) UPON TRUST subject to and contingent upon GEORGE BRERETON SADLEIR FALKINER the son of the Settlor (hereinafter called "the Contingent Beneficiary") attaining the age of twenty-one (21) years thereafter TO PAY the income arising therefrom to the Contingent Beneficiary until he shall attain the age of twenty-two (22) years or die under such age.

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(ii) UPON TRUST subject to and contingent upon the Contingent Beneficiary attaining the age of twenty-two (22) years as to the corpus of the said Trust Fund and all accumulations thereof for the Contingent Beneficiary absolutely.

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(iii) UPON TRUST should the Contingent Beneficiary die before attaining the age of twenty-two (22) years leaving children him surviving for such of his children as shall attain the age of twenty one years or marry under that age in equal shares or should no such child attain that age or marry under that age or should the Contingent Beneficiary die before attaining twenty-one years of age leaving no

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children him surviving then

- (iv) UPON TRUST for such of the children of the Settlor as shall be living at the date of the death of the survivor of the persons in this Clause previously mentioned and the children or remoter issue then living of any then deceased child of the Settlor in equal shares per stirpes and should the Trust Fund not vest as aforesaid then 10
- (v) UPON TRUST for the next of kin of the Settlor as determined by the provisions now in force of the Wills Probate and Administration Act 1898-1954 of the State of New South Wales.

4. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY DECLARED that notwithstanding all the Trusts and provisions herein contained and in particular the Trust to accumulate the income of the Trust Fund and notwithstanding that it is in derogation of such Trust the Trustees may at their absolute discretion from time to time apply the whole or any part or parts of the Trust Fund whether capital or income or accumulated income for or towards the maintenance education benefit or advancement in life of the person or persons who is or are at such time or times presumptively prospectively and/or contingently entitled thereto under this Deed and the Trustees shall be entitled in the case of infancy to pay any sum or sums so applied to the parent guardian or other person for the time being having the care or custody of any such person and the Trustees shall not be bound as such Trustees to see to the application of any moneys so applied or paid AND the Trustees may refuse to make any such payment or applications of the Trust Fund or any part thereof without assigning any reason for their refusal so to do AND IT IS ALSO HEREBY DECLARED that the receipt of each of the persons aforesaid for all or any moneys expressed therein to have been paid to her him or them in pursuance of the foregoing provisions shall notwithstanding her or his minority be a sufficient discharge to the Trustees. 20 30 40

5. Any moneys liable to investment under the trusts of these presents may be invested by the Trustees in the name of the Trustees in any part

of the world in or upon :

- (a) Any investments for the time being authorised by the law of the Country State Dominion or Colony in which such investment is made for the investment of Trust Funds.
- (b) Upon fixed deposit or on deposit at call with any Bank or Banking Company.
- 10 (c) In the absolute discretion of the Trustees in the purchase of debentures debenture stock preference ordinary deferred management or other shares of any company whether Public or Proprietary incorporated by Royal Charter or special Act or by or under any public general Act or Acts of Parliament and notwithstanding that any such shares shall not be fully paid or shall be contributing or that such company may be one in which any person holding office as a Trustee hereof is interested either as shareholder director employee or otherwise
- 20 and notwithstanding further that the Articles of Association of the Company shall contain clauses restrictive of the rights of voting or of transfer of shares or of appointment of Directors or clauses providing for a differentiation in the dividends payable on different shares or classes of shares.
- (d) In the purchase of lease of lands of any tenure whatsoever in any part of the world and in the purchase of sheep cattle horses plant and/or
- 30 machinery and any other property necessary to enable them to work and carry on a grazing pastoral horticultural and/or agricultural business.
- (e) In any investment not by law or hereby specifically authorised and whether or not involving waste or subject to liability which the Trustees may in their absolute discretion consider suitable or desirable for investment of the Trust Fund or any part thereof as though the
- 40 Trustees were the absolute owners of the trust property.
- (f) In effecting insurance upon the life of any beneficiary or of any person or persons in whom any beneficiary hereunder whether vested or contingent may have an insurable interest.

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AND with power to the Trustees from time to time to vary any such investments as aforesaid into or for others of a nature hereby authorised.

6. All moneys and property in the nature of income from time to time received by the Trustees shall be deemed to be income and to be earned as at the date of such receipt and no such moneys shall be liable to be apportioned as between capital and income.

7. It is expressly hereby declared that the Trustees may purchase or otherwise acquire any real or personal property which the Trustees may consider to be in the interests of the beneficiaries and may make any such purchase either for cash or on terms and may either secure the purchase money or any part thereof by Mortgage over the assets of the Trust Fund or any part thereof or may borrow moneys upon the security of such assets or any of them at such interest and for such terms and upon such conditions as the Trustees may think fit. 10 20

8. IT IS HEREBY AGREED AND DECLARED that in connection with the execution of the trusts of these presents the Trustees shall have the following discretionary powers and authorities (in addition to any other powers and authorities otherwise vested in them) to be read with and so far as they do not restrict or alter the same to be deemed to be supplemental or additional to the powers for the time being vested in Trustees by law namely :-

(a) To apply lay out or invest the whole or any part of the Trust Fund in such manner and in such part of the world and in property of such nature and upon such terms and conditions in all respects as the Trustees in their absolute discretion shall think fit and to the intent that the Trustees shall have the same powers authorities and discretions in investing the Trust Fund in all respects as they would have if they were the absolute owners beneficially entitled to the Trust Fund and the Trustees shall not in any way be limited to investments which are investments in which Trustees are by law authorised or permitted to invest trust funds. 30 40

(b) WITHOUT PREJUDICE to or in any way limiting

the wide scope and generality of the aforesaid trust to apply lay out and invest the Trust Fund IT IS DECLARED that the Trustees may apply lay out or invest the Trust Fund in the purchase or acquisition of real or personal property and whether present in remainder deferred future expectant contingent or of any other kind whatsoever including rights shares notes issues debentures bonds claims or interests contracts choses in action of any kind whether or not involving liabilities and whether or not upon personal credit and/or upon security over property or partly upon security and partly upon personal credit or without any such credit or security and howsoever otherwise as they shall think fit and whether in their name or not and whether payable to bearer or not and whether or not any such application laying out or investment of the Fund or part thereof is made with a view to capital accretions or increments or for the production of income and/or other profits or partly for any of those purposes or for any other purpose the Trustees shall consider to be for the benefit of the Trust estate or any part thereof or of all or some one or more beneficiary or beneficiaries.

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30 (c) To sell the whole or any part of the Trust Fund or the investments representing the same at any time or times for such price or prices and whether for cash or on terms and generally on such terms and conditions as the Trustees may think fit and to invest the proceeds of any such sale or sales in manner hereby authorised.

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50 (d) To manage and order all the affairs of any property forming part of the Trust Fund in the hands of the Trustees as regards letting occupation improvements repairs insurance against fire hail or any other risk receipt of rents indulgences and allowances to tenants and all other matters And in case any buildings on any property forming part of the Trust Fund shall be damaged or destroyed by fire to use the moneys received from any insurance company in rebuilding or reinstating the premises damaged or destroyed and in case the moneys so received are not sufficient for the purpose of rebuilding or reinstating the

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premises damaged or destroyed the Trustees may sell and convert any part of the Trust Fund for the purpose of providing the moneys necessary to rebuild and reinstate the said premises.

- (e) To pay calls on shares forming part of the Trust Fund and charge the same to the Trust Fund and for that purpose to raise money if necessary by sale or mortgage of any portion of the Trust Fund. 10
- (f) To assent to and concur in any arrangement sale transfer or exchange of any shares stocks or debentures modifying any rights privileges or interests in relation to the Trust Fund and to agree to and concur in any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any company in which any such shares stocks or debentures forming the whole or any part of the Trust Fund for the time being may 20 be invested or agree to or concur in any re-arrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose whatsoever with any other company or companies person or persons or whereby any such shares stocks or debentures are substituted or given in exchange for other shares stocks or debentures whether in or of the same company or otherwise and for any such purpose to deposit surrender 30 apply for or exchange any scrip or documents of title relating thereto and out of the income or capital of the Trust Fund to pay any contribution or incur any necessary expense in connection with any such scheme or arrangement and generally to manage or deal with the property forming the Trust Fund as fully as if the Trustees beneficially owned the same

9. Every trust discretion or power hereby 40 conferred upon the Trustees in respect of the management and administration of the Trust Fund shall be an absolute and uncontrolled discretion trust or power and may be exercised in all respects as the Trustees could exercise the same if they were absolutely entitled to the Trust Fund

10. That the receipt in writing of the Trustees



or the duly appointed agent of the Trustees for all moneys or securities expressed therein to have been paid or transferred to them shall effectually discharge the person or persons company or companies corporation or corporations or other authority Parliamentary Governmental or Statutory paying or transferring the same therefrom and from being concerned to see to the application thereof or being accountable for the non-application or misapplication thereof

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11. That the Trustees may instead of acting personally employ and pay a Solicitor Accountant Broker Agent or other person or transact any business or to do any act required to be done in connection with the administration of the trusts hereby declared including the receipt and payment of moneys

12. That the Trustees may take and act upon the opinion of any Counsel or practising Solicitor of in either case at least ten years' standing in the United Kingdom of Great Britain or the Commonwealth of Australia or any of the States thereof or in any other country where trust funds shall be invested (but in such last mentioned case only in relation to the funds invested in such other country) in relation to the interpretation of these presents or any other document or statute as to the administration of the trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustees in accordance with such opinion but nothing in this provision shall prohibit or impede the Trustees from applying to any Court if they shall think fit or prohibit any of the beneficiaries from so doing

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13. That any Trustees of these presents being a Company or a Trustee Company or a Solicitor Practising Accountant or other person engaged in any profession may be so employed or act and shall be entitled to and be paid all usual or proper professional or other charges for any business or act done by him or his firm in the premises whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a Solicitor or Accountant or other professional person

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14.. That the Trustees may reimburse themselves out of moneys which come to their hands under the

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trusts aforesaid all fees costs charges and expenses (if any) to which they may be entitled under Clause 13 hereof and also all expenses to be incurred in or about the execution of the trusts contained in these presents

15. That in addition to the express powers hereby conferred on the Trustees the Trustees shall be entitled to exercise in respect of the Trust Fund wherever situated all the powers authorities and discretions conferred on a Trustee by the law of the State of New South Wales as if the same were expressly included in these presents and that the rights and liabilities of the Trustees and of the beneficiaries as between themselves and as against the Trustees and the administration of the trusts of this Deed shall be regulated in the same manner as they would be under the laws of the said State

10

16. That no purchaser or Mortgagee from the Trustees of any part of the Trust Fund shall be concerned to enquire as to the propriety of the sale or Mortgage to them

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17. No person being a Trustee of this Deed shall be liable to any beneficiary or to any co-Trustee or to any other person in respect of any act or omission on its part in or about the administration of the Trust Fund or in respect of any act or omission purported to be done or omitted pursuant to the provisions of this Deed unless such act or omission be dishonest or constitute a wilful breach of trust

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18. The following provisions shall apply with regard to the appointment removal and retirement of Trustees :-

- (a) Trustees or a Trustee may be appointed or removed and may retire at any time in accordance with the law for the time being in force in New South Wales.
- (b) All or any one or more of the Trustees for the time being may be removed at any time by Deed duly executed by the Settlor and after his death by Deed duly executed by his legal personal representative or representatives
- (c) The power of appointing new Trustees in the place of a Trustee or in addition to any existing Trustee or Trustees is vested in the

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said Settlor and after his death in his legal personal representative or representatives On making any such appointment the appointor or appointors may appoint himself or herself or themselves and subject as aforesaid the retirement and appointment of Trustees shall be regulated by the Trustees Act 1925 of the State of New South Wales

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1st Schedule the Case Stated. 1st Trust Deed dated 4th October 1961

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10 IN WITNESS whereof these presents have been duly executed the day and year first hereinbefore written

SIGNED SEALED AND DELIVERED )  
by the said GEORGE BRERETON ) GEORGE B.S. FALKINER  
SADLEIR FALKINER in the )  
presence of :- )

W.G.K. INGLIS J.P.

for A.C.T.

20 THE COMMON SEAL of CANBERRA )  
ESTATES PTY. LIMITED was )  
hereunto affixed by ) J.F. BROWN L.S.  
authority of the Board of )  
Directors in the presence ) Director  
of John Forsyth Brown a )  
Director and )

B.E. OWENS

Secretary



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Court of New  
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No. 3

Judgment of  
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20th May 1971

No. 3

JUDGMENT OF COURT OF APPEAL

IN THE SUPREME COURT }  
OF NEW SOUTH WALES } No. 656 of 1970.

COURT OF APPEAL

CORAM: ASPREY, J.A.  
MASON, J.A.  
TAYLOR, A-J.A.

Thursday, 20th May, 1971

FALKINER & ANOR. v. THE COMMISSIONER OF STAMP  
DUTIES

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JUDGMENT

ASPREY, J.A.: In this case the Court was constituted by my brother Taylor, my brother Mason and myself.

I am of the opinion that the questions in the stated case should be answered as follows :-

- (1) Yes.
- (2) Does not arise.
- (3) (a) Yes.
- (4) By the appellants.

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I publish my reasons.

My brother Mason is of the opinion that the questions in the stated case should be answered in the same manner that I have just indicated. I publish His Honour's reasons, with his authority.

TAYLOR, A-J.A.: I have had the advantage of reading the reasons of my brother Mason, and I agree the questions should be answered as indicated by him, and I agree with his reasons.

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ASPREY, J.A.: In the result, the order of the Court is that the questions in the stated case are answered as follows :-

- (1) Yes.
- (2) Does not arise.
- (3)(a) Yes.
- (4) By the appellants.

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No. 4

REASONS FOR JUDGMENT OF COURT OF APPEAL

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )

No. 656 of 1970

COURT OF APPEAL

CORAM: ASPREY, J.A.  
MASON, J.A.  
TAYLOR, A-J.A.

20th May 1971

FALKINER & ANOR. v. THE COMMISSIONER OF  
STAMP DUTIES

JUDGMENT

ASPREY, J.A.: This is a case stated pursuant to section 124 of the Stamp Duties Act 1920 (as amended). I have had the benefit of reading the judgment prepared by Mason, J.A. where the facts and the relevant parts of the settlements executed by the Settlor are set forth. There is no dispute that each of the ten settlements executed by the Settlor on 4th October 1961 is a "settlement" within the meaning of the definition contained in section 100 of the Act. The question is whether the property settled by each of those settlements is

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attracted to duty by reason of the provisions of section 102(2)(a).

Recently in *Keighley & Ors. v. The Commissioner of Stamp Duties* (7th April 1971: unreported) I expressed the opinion that "the principles to be applied in order to ascertain whether section 102(2)(a) is attracted to a settlement (as defined in section 100) are as follows :- The settlement must be construed as at the date of its execution and subsequent events must be disregarded. If it is found that its provisions so construed (i) contain any trust which according to its terms may actively operate upon the trust property so as to vest an interest therein in possession or enjoyment after the death of the testator but that (ii) such provisions make it legally impossible for that trust to so operate upon the trust property before his death, the property the subject of the trust is brought to duty". The crucial clause in the settlements in the instant case is clause 3(b)(v) which is a trust "for the next-of-kin of the Settlor as determined by the provisions now in force of the Wills Probate and Administration Act 1898-1954 of the State of New South Wales". The words "now in force" mark out the provisions of the statute in force as the date of the execution of the settlements, namely, 4th October 1961.

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The prima facie rule of construction is that a trust contained in a will or settlement in favour of the statutory next-of-kin of a settlor is to be understood as a trust for the benefit of the next-of-kin of the settlor living at his death (*Bullock v. Downes* 9 H.L.C.1: 11 E.R.627; *Mortimore v. Mortimore* 4 A.C.448; *In re Ranking's Settlement Trusts* L.R.6 Eq.601; *Deane v. Lombe* 25 S.R. 502 at p. 508). The application of the prima facie rule in the instant case obtains strong reinforcement from the terms of section 61A of the Wills Probate and Administration Act 1898-1954. The prima facie rule can, of course, be displaced where the provisions of the settlement express clearly enough a different intention on the part of the settlor. In the present case reliance was placed upon the word "then" which appears at the end of clause 3(b)(iv) as denoting a point of time for the ascertainment of the Settlor's next-of-kin otherwise than by reference to the death of the Settlor and upon *Hutchinson v. National Refuges for Homeless and Destitute Children* (1920) A.C.794. The word "then"

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has a variety of meanings and for the purpose of ascertaining the meaning which a settlor intends it to bear in a particular context it is important to have regard, not only to the whole of the clause which contains it, but to the document as a whole which forms the context to the clause (Lucas-Tooth v. Lucas-Tooth (1921) 1 A.C.594 at pp.600-601, 607, 613-614). The remainder of the settlements apart from clause 3(b) affords no assistance in the solution of the problem but, applying advice of Lord Birkenhead, L.C. to the whole of clause 3(b) itself, it is to be observed that the word "then" appears at the end of clause 3(b)(iii) and there can only sensibly bear the meaning of "in such case" and, although it twice appears in the body of clause 3(b)(iv) with the obvious meaning of "at that time", its position at the end of clause 3(b)(iv) as an introductory expression for clause 3(b)(v), just as in clause 3(b)(iii) its same position made it an introductory expression to clause 3(b)(iv), leads me to conclude that there it bears the meaning of "in such case".

The crucial words in Hutchinson v. National Refuges for Homeless and Destitute Children (supra) were "on the failure of such trusts" which were in context regarded as exactly equivalent to "then" (Supra per Viscount Finlay at p.803). But those words, which appeared twice in the will in question in that case (p.795), were on the second occasion so positioned in the context as to make them operate, not as introductory to a different disposition of the testator's residue, but to denote a time for the establishment of the class to take under the ultimate disposition of the residue. This appears plainly from the opinion of Lord Atkinson (supra at p.312) where for the second reference to the failure of the preceding trusts he re-writes the words of the will substituting the word "then" for the phrase actually used by the testator. I am of the opinion, therefore, that this case is distinguishable from the instant case and that the prima facie and natural rule of construction has not been displaced. Accordingly, the next-of-kin under clause 3(b)(v) are to be and can only be ascertained as at the date of death of the Settlor.

I turn now to consider the application of section 102(2)(a). If, as I have held, the

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next-of-kin of the Settlor are to be ascertained and can only be ascertained upon the death of the Settlor, then the death of the Settlor must operate as a condition precedent to the trust contained in clause 3(b)(v) taking effect in possession or enjoyment and it is legally impossible for that trust to take effect before his death. I refer to the authorities which I discussed in *Keighley & Ors. v. The Commissioner of Stamp Duties* (supra) and apply the principles which I there deduced from them to this case. 10  
Until the death of the Settlor the persons who could possibly fall within the class ascertainable pursuant to clause 3(b)(v) have nothing more than a mere spes successionis (*In re Parsons; Stockley v. Parsons* 45 Ch.D.51 at p.63; *Caraher v. Lloyd* 2 C.L.R.480 at p.500; *Ogden Industries Pty. Ltd. v. Lucas* 118 C.L.R. 32 at p.37). The death of the Settlor, therefore, is the condition precedent to the vesting in them of an interest in the subject 20  
property. The nature of the settlements must be examined at the date of their execution by the Settlor and if, when so construed, they are seen to contain any trust which satisfies the requirements of section 102 (2)(a), the events which in fact take place after the execution of the settlements cannot operate to free the property the subject thereof from liability to duty. The settlements in question appear to me to contain in clause 3(b)(v) such a trust. 30

It was argued, however, on behalf of the appellants that, in order for the settlements to be attracted to duty by virtue of section 102(2)(a), there must be a trust contained therein which is explicitly conditioned to take effect after the death of the Settlor; in other words, the condition precedent of the Settlor's death must be expressed in the settlements in literal terms. I cannot agree. The section speaks of "a settlement containing any trust.....to take effect after his death". It does not premise "a trust expressed to take effect after his death". In *Keighley's Case* (supra) I thought that the settlement contained a number of trusts one of which, when written out in specific terms, made the death of the Settlor (which caused the termination of the relationship of employer and employee) a condition precedent to the vesting in possession of an interest in the trust property in the employee. Other devices no doubt 40



will suggest themselves to an ingenious draughtsman to permit a settlement to usurp the function of a will. In the present case that result is achieved by the use of the phrase in clause 3(b)(v) "next-of-kin". When clause 3(b)(v) is written out with the introductory word "then" it would read "in case of the death of the Settlor Upon Trust for the next-of-kin of the Settlor as determined upon his death by the provisions now in force, etc.". I am of the opinion that where in any trust contained in a settlement the Settlor's death is either expressly or impliedly made by its provisions to operate as a condition precedent to the vesting in possession or enjoyment of the trust property or an interest therein in a beneficiary the provisions of section 102(2)(a) are satisfied.

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It was also contended in argument that the Act, being a taxing statute, should be given a strict construction. But whether or not that be the correct approach to such a statute (cf. Craies 6th Edn. pp.113-115) it is not the Stamp Duties Act but the deeds of settlement which fall to be construed in order to determine whether the Settlor has evinced an intention that a trust is contained therein "to take effect after his death" and to ascertain that intention the ordinary rules of construction apply.

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I should note that the appellants formally reserved the correctness of the decision in *Atwill & Ors. v. The Commissioner of Stamp Duties* (unreported: 27th November 1970) as to the construction of the proviso contained in section 102(2)(a).

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Before concluding these reasons I propose to refer to one aspect of my judgment in *Keighley & Ors. v. The Commissioner of Stamp Duties* (supra) to which my attention was drawn during the hearing of this appeal. In the course of referring to *Kent v. The Commissioner of Stamp Duties* 106 C.L.R.366 I stated that the daughter Rosemary attained the age of 25 during the lifetime of the Settlor. This is not correct. The Settlor died before Rosemary attained the age of 25. I should have simply said that Rosemary attained the age of 25 and thereupon obtained an absolute interest in the trust fund so that the trust conditioned to operate after the death of the Settlor to pay half of the income to her

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mother and half to her brother and the trust to operate after the death of the mother in favour of her brother absolutely did not take effect. This fortunately does not affect the basis of my reasoning in Keighley's Case.

In the present case I am of the opinion that the appeals should be dismissed and that the questions asked in the stated case should be answered as follows :

- |       |                   |    |
|-------|-------------------|----|
| 1.    | Yes               | 10 |
| 2.    | Does not arise    |    |
| 3(a). | Yes               |    |
| 4.    | By the appellants |    |

MASON, J.A.: The question raised by this stated case is whether settlements made by the deceased on 4th October, 1961, in the Australian Capital Territory contained a trust to take effect on the death of the settlor within the meaning of s.102(2)(a) of the Stamp Duties Act 1920, as amended, thereby bringing the property subject to that trust at the time of the death of the settlor into his dutiable estate. 20

The settlor died on 15th October, 1961, leaving him surviving three children including his son George Brereton Sadleir Falkiner, each of whom was under the age of 21 years and unmarried. At the time of his death and at all material times the settlor was and had been domiciled and resident in the State of New South Wales. 30

On 4th October, 1961, and within the Australian Capital Territory the settlor paid to Canberra Estates Pty. Limited (hereinafter called "the trustee") ten separate sums of \$100,000 and the settlor and the trustee executed ten separate deeds made between the deceased of the one part and the trustee of the other part. Each deed related to a separate sum of \$100,000. The provisions of the deeds are substantially similar

and the differences in their provisions have no materiality to the question raised by the stated case. In each deed the trustee is directed to stand possessed of the trust fund and all accumulations of income upon trusts set out in clause 3(b) which are as follows :

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- 10 (i) UPON TRUST subject to and contingent upon GEORGE BRERETON SADLEIR FALKINER the son of the Settlor (hereinafter called "the Contingent Beneficiary") attaining the age of twenty-one (21) years thereafter TO PAY the income arising therefrom to the Contingent Beneficiary until he shall attain the age of 22 years or die under such age.
- 20 (ii) UPON TRUST subject to and contingent upon the Contingent Beneficiary attaining the age of 22 years as to the corpus of the said Trust Fund and all accumulations thereof for the Contingent Beneficiary absolutely.
- 30 (iii) UPON TRUST should the Contingent Beneficiary die before attaining the age of 22 years leaving children him surviving for such of his children as shall attain the age of twenty-one years or marry under that age in equal shares or should no such child attain that age or marry under that age or should the Contingent Beneficiary die before attaining twenty-one years of age leaving no children him surviving then
- 40 (iv) UPON TRUST for such of the children of the Settlor as shall be living at the date of the death of the survivor of the person in this Clause previously mentioned and the children or remoter issue then living of any then deceased child of the Settlor in equal shares per stirpes and should the Trust Fund not vest as aforesaid then
- (v) UPON TRUST for the next-of-kin of the Settlor as determined by the provisions now in force of the Wills Probate and Administration Act 1898-1954 of the State of New South Wales.

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On the same day the trustee, in exercising powers conferred upon it by the deeds, applied each of the ten separate sums of \$100,000 in the acquisition by application and allotment of 10,000 fully paid ordinary shares of two dollars (\$2.00) each in Booka Pty. Limited at par and 32,000 fully paid ordinary shares of two dollars (\$2.00) each in Senior Park Pty. Limited at a premium of fifty cents (50c) per share. The trustee continued to hold each of the parcels of 10,000 shares in Booka Pty. Limited and 32,000 shares in Senior Park Pty. Limited as the trust fund referred to in the deeds until the time of death of the settlor. At that time the value of each of the said ten parcels of shares in Booka Pty. Limited and 32,000 shares in Senior Park Pty. Limited was \$100,000 and the total value of all the said shares was \$1,000,000. 10

On the footing that all the shares were included in the dutiable estate of the settlor the respondent assessed death duty payable in respect of the estate at the sum of \$735,899.26 subject to an allowance or refund of \$4,390.23 pursuant to s.103A. If the respondent be incorrect in including the shares in the dutiable estate of the settlor death duty payable in respect of the estate will be reduced by the sum of \$270,000 to the sum of \$465,899.26 subject to the allowance already referred to. 20

The questions asked in the stated case are as follows : 30

(1) Whether the whole of the abovementioned 100,000 shares in Booka Pty. Limited and 320,000 shares in Senior Park Pty. Limited should be included in the dutiable estate of the deceased for the purpose of the assessment and payment of death duty.

(2) If the answer to question (1) is in the negative, whether any, and if so which, of the said shares in Booka Pty. Limited and in Senior Park Pty. Limited should be included in the dutiable estate of the deceased for the purpose of the assessment and payment of death duty. 40

(3) Whether the amount of death duty which should properly be assessed in respect of the estate of the deceased (subject to any

allowance or refund pursuant to the provisions of section 103A of the said Act) is

(a) seven hundred and thirty five thousand eight hundred and ninety nine dollars and twenty six cents (\$735,899.26) or;

(b) four hundred and sixty five thousand eight hundred and ninety nine dollars and twenty six cents (\$465,899.26) or;

(c) some other, and if so, what amount.

(4) How are the costs of this Case to be borne and paid.

An initial problem of interpretation arises. It relates to the ultimate gift to the next-of-kin of the settlor contained in clause 3(b)(v). The question is whether the class of next-of-kin referred to in that disposition is to be ascertained as at the death of the settlor, as at the date of execution of the settlements or as at the death of the survivor of the persons mentioned in clause 3(b)(i) to (iii) inclusive.

The Prima facie rule of construction to be applied to a gift by will to next-of-kin according to the statute is that the disposition is to be read as a gift in favour of the class of next-of-kin of the testator living at his death. The prima facie rule of construction is not ordinarily displaced by the circumstance that the gift is an ultimate gift which follows an earlier limitation (Bullock v. Downes 9 H.L.C. 1) or that it is introduced by the word "then", for that word, when the gift is to next-of-kin "according to the statute", is generally to be understood as meaning "in that case", rather than "at that time" (Jarman on Wills 8th Ed. p.1642). However, when it is apparent from the context that the word "then" has the latter meaning, the prima facie rule is displaced and the gift is read as one to the next-of-kin to be ascertained as at the date of failure of the earlier limitations. Likewise, the rule may be displaced by a disposition so expressed that it is apparent that the testator has selected an artificial date as the date at which the class of next-of-kin is to be ascertained (Hutchinson v.

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Although it was argued on behalf of the appellant that the rule of construction to which I have referred is applicable to wills and not to settlements, it is well established that it applies to gifts contained in settlements as well as to those contained in wills (in re Ranking's Settlement Trusts L.R. 6 Eq. 601; Deane v. Lombe 25 S.R. 502 at 508). In its application to wills the rule has the justification that the will speaks with reference to the death of the testator. That characteristic is absent in the case of a gift to next-of-kin according to the statute under a settlement, but there remains the compelling circumstance that the statute, that is, s.61A of the Wills Probate and Administration Act 1898-1954 fixes the class by reference to the death of the deceased and defines the shares and the manner by which the members of the class so fixed are to take. 10 20

It follows therefore that unless some different intention can be discovered in the language and scheme of the dispositions, the gift to next-of-kin under clause 3(b)(v) should be read as a gift to the next-of-kin of the settlor according to the statute, the class being ascertainable as at his death.

I am unable to discover any such different intention in the deed. In support of the suggestion that the settlor intended that the class should be ascertained as at the failure of the preceding limitations reference was made to the use of the word "then" which introduces clause 3(b)(v) and to the absence of any likelihood that the settlor would wish that the class should include any child who failed to take under the earlier limitations. However, there is no reason to think that the word "then" was used in the sense of "at that time"; it seems evident from the context that it signifies "in that case". 40  
The other argument which was advanced is speculative only and ignores the character of clause 3(b)(v) as an ultimate disposition.

The argument in favour of the proposition that the date of execution of the settlement is the date for ascertainment of the class has, if anything, even less to support it. It rests on the presence of the word "now" in the expression "by the provisions now in force of the Wills Probate and

Administration Act 1898-1954". In that context the word does no more than identify the particular statutory provisions in accordance with which the class is to be ascertained. The making of the settlement in the Australian Capital Territory and the desire to avoid any suggestion that a reference to the statute was ambulatory in character may have been the occasion for the inclusion of the expression in the form which it takes, but, whether this be so or not, it is no more than speculation to assign to the presence of the word "now" any function other than that of identifying the relevant provisions of the statute.

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There being an absence of any expression of intention that the gift was to the class of next-of-kin to be ascertained as if the settlor had died at the date of execution of the settlement or as at the date of the failure of the earlier limitations, the gift is to be read as a gift to the next-of-kin of the settlor to be ascertained in accordance with s.61A at his death.

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The question then arises whether on this construction of the deed s.102(2)(a) of the Stamp Duties Act is brought into operation. That provision applies to a settlement which contains a trust to take effect on or after the death of the settlor. To enable the paragraph to apply to a settlement the trust must be "so expressed that it cannot operate to give immediate enjoyment until the specific event of the settlor's death has occurred" (Kent v. Commissioner of Stamp Duties (N.S.W.) 106 C.L.R. 366 at 376; see also Rosenthal v. Rosenthal 11 C.L.R. 87 at 92, 96).

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It is accepted that the expression "to take effect" in s.102(2)(a) is used in the sense of vesting in possession, not in the sense of vesting in interest. The expression "is intended as one descriptive of dispositions taking effect in enjoyment or in possession after the death of the settlor" (Elder's Trustee & Executor Co. Ltd. v. Federal Commissioner of Taxation 118 C.L.R. 331 at 337).

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In order to attract the operation of the paragraph it is not necessary to demonstrate that the disposition which is relied upon as a trust to take effect after death will certainly come into operation; it is sufficient to show that, if it

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comes into operation, it will take effect in possession or enjoyment after the death of the settlor. Thus, a disposition will give rise to a trust to take effect after death, notwithstanding that it is contingent only and that its operation is dependent upon the failure of earlier dispositions (Kent's Case (supra)).

The gift to next-of-kin contained in clause 3(b)(v) is contingent upon the failure of earlier dispositions. What is more, the disposition is one which does not vest in interest or in possession and enjoyment, until the death of the settlor. Until that date, on the interpretation which I have given to the clause, it is impossible to ascertain the members of the class to take and the shares and manner in which they take. Moreover, it has been said that the prospective members of the class consisting of the statutory next-of-kin of an individual have no existence whatever in law while the propositus is living. They have no proprietary interest in property which is the subject of a gift in favour of that class until the death of the propositus; they have no more than a spes successionis (in re Parsons 45 Ch.D. 51 at 63; Ogden Industries Pty. Limited v. Lucas (1970) A.C. 113 at 126).

It was submitted on behalf of the appellants that s.102(2)(a) does not operate to include the assets comprised in the trust fund in the dutiable estate of the settlor because those assets, so it is said, were not subject to the trust contained in clause 3(b)(v) at the death of the settlor, the contingency upon which that trust depended for its operation not having been fulfilled at the date of death. The point of the submission is apparently that property cannot be said to be subject to a trust unless and until the disposition ceases to be contingent and gives rise to a vested interest. The argument must be rejected for it is clear that the contingent character of a trust does not preclude the assets of that trust being accurately described as property which is subject to that trust. In Kent's Case (supra) s.102(2)(a) was regarded as bringing into the dutiable estate the assets of a trust fund, notwithstanding that the relevant trust to take effect after the death of the settlor was contained in a disposition which gave rise to a contingent gift, the contingency not having been fulfilled at the death of the settlor.

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The appellants further submitted that the decision of this Court in Keighley v. The Commissioner of Stamp Duties (unreported - judgment delivered 7th April, 1971) was incorrectly decided and that in order that s.102(2)(a) might apply, it is necessary that the provisions of the settlement should expressly require the occurrence of the specific event of the settlor's death as a condition precedent to the immediate enjoyment of the interest the subject of the trust. Effect cannot be given to this submission, but in any event, having regard to the interpretation which I have placed upon clause 3(b)(v), I am unable to see how the submission, even if upheld, could assist the appellants' case.

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In the result I am of opinion that the questions asked in the stated case should be answered as follows :

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- (1) Yes
- (2) Does not arise.
- (3)(a) Yes.
- (4) By the appellants.

TAYLOR, A.J.A. : I have had the advantage of reading the judgment of my brother Mason. I agree that the questions should be answered as indicated by him, that is :

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- (1) Yes.
- (2) Does not arise.
- (3) (a) Yes.
- (4) By the appellants.

and I agree with his reasons.

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Court of New  
South Wales  
(Asprey J.A.  
Mason J.A.  
Taylor A-J.A)  
20th May 1971  
(continued)

In the Court  
of Appeal of  
The Supreme  
Court of New  
South Wales

ORDER OF THE COURT OF APPEAL

IN THE SUPREME COURT  
OF NEW SOUTH WALES

No. 656 of 1970

No. 5

COURT OF APPEAL

Order of the  
Court of  
Appeal of the  
Supreme Court  
of New South  
Wales

IN THE MATTER of the Estate of  
GEORGE BRERETON SADLEIR FALKINER  
Deceased

20th May 1971

AND IN THE MATTER of the Stamp Duties Act,  
1920-1959

BETWEEN: PAULINE ARNOLD FALKINER and  
PERPETUAL TRUSTEE COMPANY LIMITED  
Appellants

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AND: THE COMMISSIONER OF STAMP DUTIES  
Respondent

The twentieth day of May, 1971

This matter having come on for hearing on the  
sixth and seventh days of May, 1971 WHEREUPON AND  
UPON READING the Stated Case herein dated the  
twelfth day of November, 1970, AND UPON HEARING  
Mr. P.J. Kenny of Queen's Counsel and Mr. C.V.  
Cullinan of Counsel for the Appellants and  
Mr. Forbes Officer of Queen's Counsel and  
Mr. M.H. McLelland of Counsel for the Respondent  
IT WAS ORDERED that the matter stand for Judgment  
and the same standing in the List this day for  
Judgment accordingly IT IS ORDERED that the  
questions set out therein namely

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(1) whether the whole of the abovementioned  
100,000 shares in Booka Pty. Limited and  
320,000 shares in Senior Park Pty. Limited  
should be included in the dutiable estate of  
the deceased for the purpose of the  
assessment and payment of death duty.

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(2) If the answer to question (1) is in the  
negative, whether any, and if so which, of  
the said shares in Booka Pty. Limited and in  
Senior Park Pty. Limited should be included  
in the dutiable estate of the deceased for

the purpose of the assessment and payment of death duty.

- (3) Whether the amount of death duty which should properly be assessed in respect of the estate of the deceased (subject to any allowance or refund pursuant to the provisions of section 103A of the said Act) is
- 10 (a) seven hundred and thirty five thousand eight hundred and ninety nine dollars and twenty six cents (\$735,899.26) or;
- (b) four hundred and sixty five thousand eight hundred and ninety nine dollars and twenty six cents (\$465,899.26) or;
- (c) some other, and if so, what amount.
- (4) How are the costs of this Case to be borne and paid.

be answered as follows :-

- 20 (1) Yes.
- (2) Does not arise.
- (3) (a) Yes.
- (4) By the Appellants.

By the Court,

For the Prothonotary,

(Sgd) K.C. Flack

Acting Chief Clerk.

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In the Court  
of Appeal of  
The Supreme  
Court of New  
South Wales

          
No. 5

Order of the  
Court of  
Appeal of the  
Supreme Court  
of New South  
Wales

20th May 1971  
(continued)

In the Court  
of Appeal of  
The Supreme  
Court of New  
South Wales

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER  
MAJESTY IN COUNCIL

No. 6

IN THE SUPREME COURT  
OF NEW SOUTH WALES }

No. 656 of 1970

Order granting  
Final Leave to  
Appeal to Her  
Majesty in  
Council

COURT OF APPEAL

18th October 1971

IN THE MATTER of the Estate of GEORGE  
BRERETON SADLEIR FALKINER  
deceased.

AND IN THE MATTER of the Stamp Duties Act, 10  
1920-1959

BETWEEN : PAULINE ARNOLD FALKINER and  
PERPETUAL TRUSTEE COMPANY LIMITED  
Appellant (Appellant)

AND : THE COMMISSIONER OF STAMP DUTIES  
Respondent (Respondent)

The Eighteenth day of October, 1971.

UPON MOTION made this day pursuant to the Notice of  
Motion filed herein on the eighth day of October,  
1971, WHEREUPON AND UPON READING the said Notice of 20  
Motion, the affidavit of DAVID LEE PRICE sworn on  
the eighth day of October, 1971, and the  
Prothonotary's Certificate of Compliance, AND UPON  
HEARING what is alleged by Mr. C.V. Cullinan of  
Counsel for the Appellants and Mr. J.S. Withington  
for the Respondent IT IS ORDERED that final leave  
to appeal to Her Majesty in Council from the  
judgment and order of the Honourable Court of  
Appeal given and made herein on the twentieth day  
of May, 1971 be and the same is hereby granted to 30  
the Appellants, AND IT IS FURTHER ORDERED that upon  
payment by the Appellants of the costs of  
preparation of the Transcript Record and despatch  
thereof to England the sum of FIFTY DOLLARS (\$50.00)  
deposited in Court by the Appellants as security  
for and towards the costs thereof be paid out of  
Court to the Appellants.

By the Court,

For the Prothonotary,

(Sgd) K.C. FLACK  
Chief Clerk.

L.S.

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ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT OF NEW SOUTH  
WALES

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IN THE MATTER of the Estate of GEORGE BRERETON SADLEIR  
FALKINER deceased

- and -

IN THE MATTER of the Stamp Duties Act 1920 - 1959

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B E T W E E N :

PAULINE ARNOLD FALKINER  
PERPETUAL TRUSTEE COMPANY LIMITED Appellants

- and -

THE COMMISSIONER OF STAMP DUTIES Respondent

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RECORD OF PROCEEDINGS

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Allen & Overy,  
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Solicitors for the Appellant

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24 John Street,  
Bedford Row,  
London WC1N 2DA

Solicitors for the  
Respondent